

IN THE UNITED STATES DISTRICT COURT FOR THE  
MIDDLE DISTRICT OF PENNSYLVANIA

MARCELLUS JONES,

Plaintiff

v.

JOHN WETZEL, ET AL.,

Defendants

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CIVIL NO. 4:CV-16-2548

(Judge Brann)

**MEMORANDUM**

February 13, 2017

**Background**

Marcellus Jones, an inmate presently confined at the Fayette State Correctional Institution, LaBelle, Pennsylvania (SCI-Fayette) filed this pro se civil rights action pursuant to 42 U.S.C. § 1983. Named as Defendants are Secretary John Wetzel and other supervisory officials employed by the Pennsylvania Department of Corrections (DOC) as well as multiple officials at Plaintiff's prior place of confinement, the State Correctional Institution, Huntingdon, Pennsylvania (SCI-Huntingdon).

After being directed to do so, Plaintiff submitted an in forma pauperis

application on February 6, 2017.<sup>1</sup> See Doc. 6. On that same day, Plaintiff filed a “motion to withdraw civil complaint.” Doc. 8.

### **Discussion**

As noted above, Plaintiff has submitted a motion to withdraw which indicates that he does not wish to proceed with this action. Federal Rule of Civil Procedure 41(a)(1)(A)(i) provides that a plaintiff may dismiss an action without a court order by filing a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment. Dismissal under this provision is without prejudice.

Service of the complaint has not yet been ordered. Based upon a review of Plaintiff’s motion to withdraw, it is appropriate to construe that pro se submission as seeking voluntary dismissal pursuant to Rule 41(a)(1).

The Court will accept Jones’ pro se request to withdraw and his complaint will be dismissed without prejudice to Plaintiff’s renewal of his claims. However, Plaintiff is forewarned that renewal of his claims is subject to the applicable statute of limitations. See Wilson v. Garcia, 471 U.S. 261, 276 (1985). An

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<sup>1</sup> In light of Plaintiff’s filing of an in forma pauperis application, his motion (Doc. 5) seeking an extension of time to submit paperwork necessary to pursue this matter will be denied as moot.

appropriate Order will enter.<sup>2</sup>

BY THE COURT:

s/ Matthew W. Brann  
Matthew W. Brann  
United States District Judge

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<sup>2</sup> Since Plaintiff's motion to withdraw was filed the same day as the in forma pauperis application, the in forma pauperis application will also be deemed withdrawn.